

# **EPA's Perspective on Addressing TMDLs Through General Permits**

**TMDL Implementation Workshop –  
Maryland Dept. of the Environment  
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# Discussion Outline

- NPDES Permitting - The Basics
- Individual vs. General NPDES Permits
- Requirements for Integrating TMDLs into General Permits
- Challenges to Using General Permits to Address TMDLs
- General Permits Workgroup
- Next Steps for Workgroup

# NPDES Permitting - The Basics

- Clean Water Act prohibits the discharge of pollutants unless the source obtains a National Pollutant Discharge Elimination System (NPDES) permit
  - NPDES permits are obtained through an application process
- A permitted discharge in compliance with its NPDES permit is “shielded” from legal challenge alleging CWA violations (Section 402(k) of the CWA)
- A discharge of pollutants without a permit or in direct violation of an existing permit is subject to legal challenge for violating the CWA
  - Permittee may be subject to fines up to \$25,000 per day

# Individual vs. General Permits

## Individual Permits

- Permit written to cover one facility
- Detailed application process and heavy involvement of permitting authority
- Greater oversight over permittee
- Provisions are discharger-specific
- Site-specific limits (WQBELs, WLAs) developed for 1 discharger
- Discharge must comply with WQS and any TMDLs

## General Permits

- Permit covers multiple sources
- Streamlined NOI and minimal involvement of PA after GP issuance
- Much less oversight over permittees
- Provisions apply to multiple dischargers
- Limits developed for broad discharge categories, sources, or watersheds
- Discharge must comply with WQS and any TMDLs

# Requirements for Integrating TMDLs into GPs

- No permit may be issued to a new source or new discharger, if the discharge will “**cause or contribute to the violation of WQS.**” 40 CFR 122.4(i).
- If a pollutant discharge has the reasonable potential to cause or contribute to an exceedance of WQS, the discharger’s NPDES permit must contain a Water Quality Based Effluent Limit (WQBEL) for that pollutant. 40 CFR 122.44(d)(1)(iii-vi).
- WQBELs may be expressed as BMPs when it is infeasible to calculate a numeric limit, or when the permit authority determines that such requirements are necessary to carry out the purposes and intent of the CWA. 40 CFR 122.44(k)(3)(4)
- WQBELs expressed as BMPs must ensure that “the level of water quality achieved by limits on point sources is ... **derived from, and complies with all applicable water quality standards.**” 40 CFR 122.44(d)(1)(vii)(A)
- WQBELs must be “consistent with the assumptions and requirements of any available WLAs.” 40 CFR 122.44(d)(1)(vii)(B)

# Requirements for Integrating TMDLs into GPs

- WQBELs for storm water discharges that implement WLAs may be expressed as BMPs (November 22, 2002, memo).
  - EPA expects that numeric limits will be used rarely for MS4 and construction dischargers.
  - When BMPs are imposed, the permit's administrative record needs to support that they are expected to be sufficient to implement the WLA, including monitoring necessary to assess if the expected load reductions attributed to BMP implementation are achieved.
  - Permit should provide a mechanism to make adjustments to the required BMPs as necessary to ensure their adequate performance.

# Challenges to Using GPs to Address TMDLs

- Conflict between need to maintain general permits as an alternative to individual permits, and the need to impose TMDL requirements which are more specific to the discharger
- Incorporating receiving water-specific TMDLs into general permits has generally not taken place
- Difficulty of developing general permit language for a permittee population that is largely unknown or that doesn't exist yet
- What level of integration will comply with the minimum regulatory requirements?

# Challenges to Using GPs to Address TMDLs

- What type of monitoring is appropriate for general permits to determine compliance? (particularly challenging for BMP-based storm water GPs)
- How should TMDLs that do not include specific allocations for sources covered by general permits be implemented?
- How to improve the “handoff” between TMDL and permitting programs?



# General Permits Workgroup

- EPA
- States: CA, FL, MD, MI, OR, RI, SC, WA
- Monthly Conference Calls began in May 2003

# General Permits Workgroup - Objectives

- Develop guidance, including recommendations for integrating TMDLs and other water quality-related issues with general permits
- Compile case studies, sample permits, technical support documents, and questions & answers
- Initiate creation of policies, principles, frameworks, and guidance as necessary to implement recommendations

# Summary of Preliminary Workgroup Options

- The general permitting approach is necessary and workable, and TMDLs should be crafted in such a way that they can be implemented via general permits.
- Discharge requirements to impaired waters (pre- and post-TMDL) should be more substantive than the basic permit requirements.
  - In advance of permit issuance, regulatory authorities should coordinate how specific TMDLs will be translated into permits.
- Potential options for incorporating TMDLs into general permits:
  - “Presumptive BMPs”
  - Quantitative Benchmark
  - Permit Activity Tracking System/Effluent Trading
  - Compliance w/Current Permit (e.g., current CGP)

# Next Steps for Workgroup

- Finalize Draft Memorandum with Case Studies
- Develop and Deploy Implementation Strategy
- Continue to Assess Results

# For More Information

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**or**

**TMDL information: <http://www.epa.gov/owow/tmdl/>**

**NPDES permitting information: <http://cfpub2.epa.gov/npdes/>**